XI-1 89 / (Jail)
C. J. P. R. 11/94/2,000

CF0000060847

CrA 1044/96 (2)

APPEAL OF PRISONER

Division Bench (Criminal)

No. 918 Name प्रेम साय

Father's name भैसा रावत

Residence सा॰ बंसलपुर थाना लैलूंगा Age 36 वर्ष

Sentenced to आजीवन कारावास On 16.5.96

Under section 302 भा॰ द॰ सं॰ by मुख्य न्यायिक दण्डा॰ रायगढ़

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may not heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear .

1 Date of Application for copy of Judgement 16.5.96, 4 Copy

2 Date on which copy received 16.5.96

3 Date on which Appeal sent 18.5.96

4 Whether the prisoner wishes to be represented or not – Yes / No

No. 918 Name प्रेम साय

Confined in जिला Jail रायगढ़ स्थानांतरित रायपुर

No. 1305 Dated 18/5/96 199

Forwarded to the CHIEF JUDICIAL MAGISTRATE रायगढ़

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न : प्रतिलिपि निर्णय प्रतिलिपि

Superintendent
जिला जेल रायगढ़ (म.प्र.)
Jail

Date of receipt in office

Date of receipt record to accompany the

Memo of Appeal to the Appellate court

No. 1305 Dated 4-6-96 199

Forwarded to the Court of Sessions Judge Raigarh
along with letter No. 191/5-Raigarh and Judgment
333/95-Raigarh

Date of receipt in Appellate Court

(P. T. O.)

4-6-96

XI-HC-22

(14)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. No 1044/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DHIRENDRA MISHRA, JJ.

13-1-2006

Shri D.R. Sharma, Sr. Advocate with Shri B.D. Badgaiyya, Advocate for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dias*.

PER L.C. BHADOO, J.

By this appeal under Section 374 (2) of the Cr.P.C. accused/appellant Premsai has questioned the legality of the judgment of conviction and order of sentence dated 16th May 1996 whereby 1st Additional Sessions Judge, Raigarh after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

The prosecution case, in brief, is that on 13-7-95 Karam Sai (PW-1), younger brother of the accused lodged the report Ex.-P/1 in the police station Lelunga to the effect that yesterday evening he was at his residence and was working in his kitchen garden. His elder brother came after consuming liquor and demanded food from his mother on which his mother replied that food is not ready. On hearing this, the accused became enraged, picked up the axe and attacked with the axe twice on the head of his mother Budhani Bai, as a result of which she fell down, and within short time she had died. On receiving this report, S.H.O. police station after registering the crime No.84/95 under section 302 of the I.P.C. proceeded to the scene of occurrence, after giving notice to the Panchas, prepared Panchanama (Ex.-P/2) of the dead body of Budhani Bai. He took into possession blood stained soil and plain soil from the place of occurrence as also the cotton sari drenched with blood which Budhani Bai was

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

wearing. The dead body of Budhani Bai was sent for postmortem examination to the Primary Health Centre, Lelunga where Dr. Shailendra Upadhyay (PW-5) conducted postmortem on the dead body of the deceased and prepared postmortem report Ex.-P/4 in which he opined that cause of death was syncope due to excessive haemorrhage as a result of head injury. The axe, weapon of offence, was taken into possession under Ex.-P/2 and same was sent to the doctor for his opinion as to whether injuries which were found on the body of the deceased could be caused by the weapon of offence. The doctor gave opinion Ex.-P/5. The site plan Ex.-P/7 was prepared by Patwari.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Gharghoda who in turn committed the case to the Sessions Judge, Raigarh from where learned 1st Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 8 witnesses. The statement of the accused was recorded by the Additional Sessions Judge under Section 313 of the Cr.P.C. in which the accused denied the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime on account of animosity with Ramji Lal. Learned Additional Sessions Judge after hearing arguments of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

The homicidal nature of death of Budhani Bai is not in dispute. The crime was witnessed by none else than the brother of the accused and son of the deceased namely PW-1 Karam Sai who has stated that on 12-7-95 in the evening he was working in the kitchen garden, at that time, the accused came after consuming liquor and asked for the food from his mother (deceased). When the deceased replied that food is not ready, the accused became

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

enraged, picked up the axe and assaulted her on her head, as a result of which she fell down on the ground and died spontaneously.

Learned counsel for the accused/appellant argued that as the relations of the accused and this witness were strained, therefore, he has falsely implicated the accused in the crime.

But, we do not find any substance in this argument, as nothing has been elicited in the cross-examination of this witness to make the defence plausible raised by counsel for the accused/appellant. This fact has been denied by PW-2 Jailal Sidar that there was no dispute between the accused and this witness. The evidence of Karam Sai (PW-1) lends support from the fact that the accused made extra judicial confession before PW-3 Shankar Prasad who was working in his agricultural field before whom he said that "I have murdered my mother". He has further stated that the accused was in the habit of consuming liquor that is why Prem Sai and Karam Sai were residing separately. There is no reason for this witness to implicate the accused in a heinous crime like murder of mother of the accused. The extra judicial confession made by the accused before this witness was voluntary, true and prompt, as the same lends support from the evidence of PW-1 Karam Sai.

The manner in which the accused assaulted with the deadly weapon on the forehead of Budhani Bai with such a force that frontal bone of right side was fractured, as a result of which she died spontaneously. Therefore, we are of the opinion that there is no illegality and infirmity in the judgment of the trial Court, same is based on the legal and clinching evidence.

In the result, we do not find any substance in this appeal, same is liable to be dismissed and it is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

Sd/-
L.C. Bhadoo
Judge

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